DOCKET FILE COPY ORIGINAL

EX PARTE OR LATE FILED

AT&T

Judith D. Argentieri
Government Affairs Director

Suite 1000
1120 20th Street, NW
Washington, DC 20036
202 457-3851
FAX 202 457-2545
Email jargenti@ga1120a.attmail.com

October 17, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW - Room 222
Washington, DC 20554

RECEIVED
OCT 17 1996
Federal Communications Commission
Office of Secretary

Re: Ex Parte Presentation in CC Docket No. 96-61

Dear Mr. Caton:

Today I provided copies of the attached letter to the following individuals: John Nakahata, Special Assistant to Chairman Reed Hundt; Lauren Belvin, Senior Legal Advisor to Commissioner James Quello; James Casserly, Senior Legal Advisor to Commissioner Susan Ness; Daniel Gonzalez, Legal Advisor to Commissioner Rachelle Chong; A. Richard Metzger, Jr., Deputy Bureau Chief, Common Carrier Bureau; Richard Welch, Chief, Policy Division, Common Carrier Bureau; and Melissa Waksman, Attorney, Christopher Heimann, Attorney, Jordan Goldstein, Attorney, Patrick DeGraba, Economist, all from the Policy Division, Common Carrier Bureau.

Two copies of this letter are being submitted to the Secretary of the Federal Communications Commission in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Sincerely,

Judy Argentieri

Attachment

No. of Copies rec'd 0+2
List ABCDE

R. Gerard Salemme
Vice President - Government Affairs

Suite 1000
1120 20th Street, N.W.
Washington, DC 20036
202 457-3118
FAX 202 457-3205

October 17, 1996

Regina M. Keeney, Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, Room 500
Washington, DC 20554

Re: CC Docket No. 96-61

Dear Ms. Keeney:

In the above docket, the Commission is considering whether to adopt a "mandatory detariffing" rule that would prohibit nondominant carriers from filing tariffs for any domestic service, including services offered to residential and small business customers. The Commission's proposal, if adopted, would create some significant implementation difficulties for AT&T and, presumably, for the industry as a whole.

Although AT&T agrees that tariffs are no longer necessary to ensure that nondominant carriers' rates are just, reasonable and nondiscriminatory, tariffs nonetheless continue to serve the valuable function of providing a mechanism for establishing the rates, terms and conditions of service that bind customers and carriers. A mandatory detariffing rule could eliminate or diminish the efficiencies that tariffs create, and would certainly lead to confusion and increased litigation, without any countervailing public benefit that could not be achieved by adopting a "permissive" detariffing rule. For this and other reasons, AT&T and numerous other parties have urged the Commission to adopt permissive instead of mandatory detariffing.

More specifically, if the Commission were to adopt mandatory detariffing, tariffs would no longer be available to serve as the instruments establishing the rights and obligations of carriers and their customers. Because the industry has never operated without the ability to file tariffs, there would be inevitable disputes about what a carrier must do in order to create, communicate and apply rates and terms. A mandatory detariffing rule would thus, at a minimum, create enormous uncertainty, increased litigation and additional costs.

For example, litigation would be a virtual certainty over whether, as a matter of contract law, carriers are required to send to each individual customer a document setting forth all of the rates and regulations applicable to its offerings, whether customers must then sign and return some form of acknowledgment, and whether carriers should have to repeat the entire process each time they wanted to change their rates and terms. The problem is especially difficult -- if not insurmountable -- with respect to so-called "casual calling," where customers are occasional users of a carrier's network and have no ongoing relationship with that carrier (e.g., collect calls and calls by customers using another carrier's network because of overloads on the network of their presubscribed carrier).

A carrier could use an alternative direct mail approach that dispenses with any customer acknowledgment requirement, and that does not require individual notice of all changes. But the costs of even this less extreme approach are substantial. AT&T's average cost of a direct mail piece, including development, fulfillment, postage and follow-up response to consumer inquiries, is between $.74 and $1.17 per customer. There are over 100 million consumer and small business customers in the nation. Assuming each of those customers received 3-4 principally price-notice mailings per year,[1] if AT&T's costs are typical, industry notification costs could range from $222 to $468 million annually.[2]

AT&T believes that claims that individual notice is necessary to bind customers would ultimately be rejected, provided that the rates and terms carriers seek to enforce are available -- somewhere -- for public inspection. But this would, in substance, recreate a permissive detariffing rule, as authorized by Section 203 and new Section 10 of the Communications Act. Thus, at best, the only thing that would be accomplished by mandatory detariffing is to remove the certainty that tariffs now provide, and require carriers to incur potentially enormous litigation costs to establish a similar mechanism outside of the Communications Act. The

---

[1] This year, AT&T has already made over 600 tariff changes in its residential services tariffs. Of those, more than a dozen were significant enough that they would have merited sending notice to significant numbers of customers.

Price changes that may require notification include changes in the full array of a carrier's services. Thus, even if a carrier has a simple postalized rate structure for domestic 1+ calls, customers also need information about operator services rates for calls from their homes and from aggregator phones, as well as rates for international calls.

[2] Increases in transaction costs are especially difficult to justify with respect to the millions of consumers who make relatively few calls. Current billing costs alone often make serving such customers unprofitable. Moreover, AT&T and other carriers serve these and other customers at averaged rates, a fact which distinguishes telecommunications from other (e.g., credit card) industries. Because all carriers would incur the additional transaction costs necessitated by a mandatory detariffing rule, the inevitable result of such a rule would be to increase the average price paid by all consumers.

Commission can spare the courts and the industry the expense of this process by adopting a permissive detariffing rule now.

Another issue raised by this proceeding is the fact that the rule proposed in the Notice impacts domestic interexchange services only. As the Commission correctly noted (NPRM, para, 33), many carriers today file bundled tariffs including both domestic and international services. Indeed, virtually every term plan AT&T offers business customers provides both domestic and international services under a single tariff.[3] Discount tapers and commitment levels are bundled and cover combined usage of both domestic and international services. This approach helps customers, who can obtain lower rates by combining these volumes.[4]

Application of a mandatory detariffing rule only to domestic offerings would be confusing and extraordinarily disruptive to customers taking the bundled offerings described above. Such a rule would be especially harmful if it were applied in such a manner as to effectively prohibit customers from being able to continue to combine domestic and international usage to obtain the best prices, or to disrupt arrangements negotiated between carriers and customers in a competitive market. To achieve any benefits, reduced regulation proposed by the Commission must take into account the marketplace realities of what customers expect. Customers do not want separate deals for domestic and international services; carriers have responded by creating integrated offers. To now force a separation of those bundled offers serves no purpose other than to frustrate the legitimate expectations of customers and carriers. These results could be avoided by adopting a permissive detariffing rule for offerings that include both domestic and international services. At a minimum, the Commission should establish a mechanism that permits the continuation of such combined offerings.

In sum, AT&T believes that on the record before it, the only option that is both within the Commission's authority and consistent with the public interest is to adopt permissive detariffing. Carriers could then file tariffs where that is the most efficient alternative, and instead could use contracts in situations -- such as with negotiated or customized arrangements -- where customers demand them and tariffs would not create efficiencies. In all events, whether the Commission requires

---

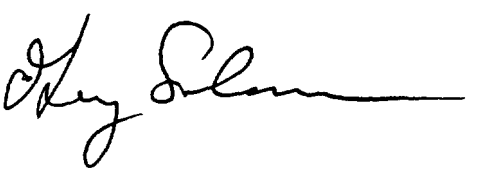
[3] To put this in perspective, of AT&T's more than 5,600 Contract Tariffs (CTs) and 183 Tariff 12 (VTNS) offerings in the market today, more than 90% of the CTs, and all of the VTNS Options, include both domestic and international services. In some cases, contracts do not exist between AT&T and customers who subscribed to the service after it was negotiated with the initial customer. Should AT&T be required to detariff the domestic portions of these offers, while preserving the tariff for service to international points, each of these thousands of tariffed offers would require the ministerial activity of amending and refiling the tariff.

[4] This practice applies not only to Tariff 12 and Contract Tariff offers, but also to virtually every other plan used both by small and large customers, including UNIPLAN®, AT&T CustomNet® Service, and OneNet.

mandatory or permissive detariffing, it should permit carriers providing bundled domestic/international offers the ability not to tariff the international components of the combined offers.

In the event the Commission goes forward with its mandatory detariffing proposal, it is vital that there be a transition period before the Commission implements new rules. Finding solutions to the problem of converting from tariffs to other arrangements for 100 million customers industry-wide, and educating consumers about the change with a minimum of confusion will take at least 12 months. The Commission should also make clear that the terms of individual carrier/customer deals currently on file at the Commission stay on file and remain unchanged by a decision to prohibit the filing of tariffs. While a transition period will not supply the Commission with the authority it now lacks to prohibit the filing of tariffs, and will not cure the problems outlined in this letter and in the record in this proceeding, it would at least avoid exacerbating the problems a mandatory detariffing regime would create.

Sincerely,



cc:

John Nakahata
James Casserly
Lauren Belvin
Daniel Gonzalez
A. Richard Metzger
Richard Welch
Donald Stockdale
Melissa Waksman
Christopher Heimann
Jordan Goldstein
Patrick DeGraba